



EMPLOYMENT TRIBUNALS

Claimant: Ms S Gorbanova

Respondent: Appletree Court Care Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Watford Employment Tribunal **On:** 5 September 2019

Before: Employment Judge Tuck (sitting alone)

Appearances

For the claimant: Mr Paxi-Cato, Counsel

For the respondent: Miss Mewies, Solicitor

JUDGMENT

By agreement of the parties, the claims against the first, second, fourth and fifth respondents are dismissed on withdrawal. The claim will proceed against the third respondent only.

CASE MANAGEMENT SUMMARY

Final hearing

- (1) All issues in the case, including remedy, will be determined at a final hearing before an Employment Judge sitting alone at the Watford Employment Tribunal, Radius House, 51 Clarendon Road, Watford, Hertfordshire, WD17 1HP, on **6 July 2020**, starting at 10 am or as soon as possible afterwards. The parties and their representatives, must attend by 9.30 am on that day. The time estimate for the hearing is 1 day, to include remedy if appropriate, based on the parties' intention to each call one witness only, the oral evidence from whom will be completed within a morning.

The claim

- (2) By a claim form presented on 3 February 2017 the claimant brought complaints of unfair dismissal and breach of contract. At a preliminary hearing before EJ Heal on 24 May 2017 an application to amend was granted it was clarified that her unfair dismissal claim was alternatively a 'dismissal' which did not 'vanish' after a successful appeal, or else a claim of constructive unfair dismissal. The claim was stayed pending the judgment of the Court of Appeal in **Patel v Folkstone Nursing Home**. That judgment has now been handed down; [2018] EWCA Civ 1689 and [2018] EWCA Civ 1843; the parties agree that the effect of the judgment is that the tribunal does not have jurisdiction to hear a claim for 'ordinary' unfair dismissal. The claimant's claim for constructive unfair dismissal and for breach of contract will now therefore be listed for a final hearing.
- (3) The claimant was employed by the respondent as a carer. She was sent a letter of dismissal dated 5 September 2016; following an appeal she was informed in a letter dated 12 October 2016 that the decision to dismiss her had been revoked and reduced to a final written warning. There was correspondence between the parties in October, and the claimant's case is that she resigned on 22 November 2016 as the relationship of trust and confidence with the Respondent had broken down.

The issues

- (4) The issues between the parties which fall to be determined by the Tribunal have been agreed by the parties to be as follows:

Constructive Unfair Dismissal

(1) Was the Claimant entitled to terminate her contract of employment by reason of the employer's conduct? Namely:

(a) The Respondent ignoring her correspondence following the initial decision on appeal (i.e. the emails from the Claimant dated 17 October and 24 October 2016);

(b) The fact that the Respondent did nothing actively to get her back into work following the appeal outcome letter;

(c) The failure of the Respondent to pay her wages from 5 September to 22 November 2016.

(2) What was the reason for the Claimant's termination of her contract of employment? Did she resign in response to the breach or did she affirm the breach by delaying her resignation until 22 November 2016?

(3) What is the appropriate remedy taking into account any Polkey deductions and any uplift or deductions under s.207A TULRCA?

Unlawful Deduction of Wages

- (1) Did the Respondent make a deduction from the wages of the Claimant between 5 September 2016 and 22 November 2016? The Claimant claims her wages, holiday pay and pension contributions during the relevant period.

(The Respondent accepts that payment is due to the claimant for the period between 5 September 2016 and 12 October 2016; it will endeavour to agree and pay the sum relating to this period prior to the Hearing.)

- (2) Were the Respondent's deductions authorised or required by statute or under a provision of the Claimant's contract?

- (3) Did the Claimant signify consent in writing or consent to the making of the deduction?

Other matters

- (5) The claimant will require the assistance of a **Bulgarian interpreter** at the Final hearing. Though she is deaf in one ear, she does NOT need a sign language interpreter.
- (6) The attention of the parties is drawn to the Presidential Guidance on 'General Case Management', which can be found at:
www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/
- (7) The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise)...*". **If, when writing to the tribunal, the parties don't comply with this rule, the tribunal may decide not to consider what they have written.**
- (8) The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.
- (9) The following case management orders *were made by consent*.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Complaints and issues

- 1.1 The parties must inform each other and the Tribunal in writing **within 14 days of the date this is sent to them**, providing full details, if what is set out

in the Case Management Summary section above about the case and the issues that arise is inaccurate and/or incomplete in any important way.

2. Statement of remedy / schedule of loss

- 2.1 The claimant must provide to the respondent by **3 October 2019** a document – a “Schedule of Loss” – setting out what remedy is being sought and how much in compensation and/or damages the tribunal will be asked to award the claimant at the final hearing in relation to each of the claimant’s complaints and how the amount(s) have been calculated.
- 2.2 If any part of the claimant’s claim relates to dismissal and includes a claim for earnings lost because of dismissal, the Schedule of Loss must include the following information: whether the claimant has obtained alternative employment and if so when and what; how much money the claimant has earned since dismissal and how it was earned; full details of social security benefits received as a result of dismissal.
- 2.3 The parties are referred to: the Presidential Guidance on pension loss at www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-pension-loss-20170810.pdf;
If the claimant is claiming for loss of pension, the Schedule of Loss must set out the basis of calculation.

3. Documents

- 3.1 On or before **17 January 2020** the claimant and the respondent shall send each other a list of all documents that they wish to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy. They shall send each other a copy of any of these documents if requested to do so.

4. Final hearing bundle

- 4.1 By **31 January 2020**, the parties must agree which documents are going to be used at the final hearing. The respondent must paginate and index the documents, put them into one or more files (“bundle”), and provide the claimant with a ‘hard’ and an electronic copy of the bundle by the same date. The bundle should only include documents relevant to any disputed issue in the case [that won’t be in the remedy bundle referred to below] and should only include the following documents:
 - the Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional / further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put right at the start of the bundle, in chronological order, with all the other documents after them;

- documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.

In preparing the bundle the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle
- the documents in the bundle must follow a logical sequence which should normally be simple chronological order.

5. Remedy bundle

- 5.1 The claimant must prepare a paginated file of documents (“remedy bundle”) relevant to the issue of remedy and in particular how much in compensation and/or damages they should be awarded if they win their claim and provide the [respondent] with a ‘hard’ and electronic copy of it by **31 January 2020**. The documents must be arranged in chronological or other logical order and the remedy bundle must have an up to date schedule of loss at the front of it.

6. Witness statements

- 6.1 The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their written statements to each other on or before **25 May 2020**. The written statements must: have numbered paragraphs; be cross-referenced to the bundle(s); contain only evidence relevant to issues in the case. The claimant’s witness statement must include a statement of the amount of compensation or damages they are claiming, together with an explanation of how it has been calculated.

7. Other matters

- 7.1 The claimant will prepare a case summary and chronology and seek to agree this with the Respondent by **22 June 2020**.
- 7.2 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.
- 7.3 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
- 7.4 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal’s permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.

7.5 Public access to employment tribunal decisions

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

7.6 Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.

7.7 Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

Employment Judge TUCK

Date: 5 September 2019

Sent to the parties on:

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For the Tribunal:

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